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# What Every Real Estate Agent Should Know

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ONTARIO  
NEW HOME  
WARRANTY  
PROGRAM

# About the Ontario New Home Warranty Program

New home purchasers in Ontario receive substantial warranty protection, set out in the *Ontario New Home Warranties Plan Act*. A non-profit corporation, the Ontario New Home Warranty Program (ONHWP) administers the Act—registering builders, enrolling new homes and resolving disputes. The Program is paid for by fees builders and vendors pay to register with ONHWP and to enrol the new homes they sell.

You can help your customers by being better informed for them. You can remind them of their rights and responsibilities under the Act, and let them know where to get more information. The Program provides informational brochures about builders and home buying to consumers, through its Regional Offices across the Province.

ONHWP reports annually to the Ontario Legislature through the Minister of Consumer and Commercial Relations.

## How the Program works

Anyone building or selling a new home in Ontario must register with ONHWP, and enrol each new home or condominium unit. When a home is completed, the buyer and builder sign a Certificate of Completion and Possession (CCP) which confirms to the Program that the sale has taken place. The CCP is also the place for the buyer to note any repairs required. The builder sends the CCP to the Program, and the Program sends the buyer a Warranty Certificate and information package.

Basic warranty protection from the builder is for one year for most items, and two years for some items (see the section, *What is covered*). Coverage for major structural defects is for seven years. Problems arising during the builder's warranty period should be brought to the builder's attention by the buyer during the warranty period. If the builder does not correct the problems, the Program will help resolve the dispute.

# What is covered

1. **Deposits.** New home purchasers are covered for financial loss, including loss of deposits, to a maximum of \$20,000 if the builder cannot or will not complete the sale through no fault of the purchaser. (This refers to completing the *sale* of the home, not its construction.)
2. **Incomplete work.** If a person has title to a home or condominium unit and is living in it, ONHWP will compensate them for completion of any unfinished work to a maximum of 2 per cent of the home's price or \$5,000 — whichever is *more*. The incomplete items *must* be part of the Agreement of Purchase and Sale. People living in a condominium unit who do not yet have title, and find some work left undone, *should* call the builder. If they require further help after that they should contact the Program and we will contact the builder.
3. **Basic warranty: defects in workmanship and materials (one year).** The builder warrants for one year from the date on the Warranty Certificate that the home is free from defects in workmanship and materials, is fit to live in and meets the Ontario Building Code.
4. **Two-year warranty:**
  - A) **"Power Train" items.** For homes enrolled after December 31, 1990, the builder warrants that the home is fit to live in; that it is free of violations of the Ontario Building Code's health and safety provisions; that it is free of defects in material or workmanship in the electrical, plumbing, and heating delivery and distribution systems; in the exterior cladding, caulking, windows and doors; and that the building envelope (all parts of the structure that contain the living space) is free of water penetration.
  - B) **Basements leaks.** The builder warrants for two years that the basement remains free of water penetration through the foundation. In condominiums, this protection includes all below-ground areas such as parking garages.



5. **Major structural defects (seven years).** For homes enrolled after December 31, 1990, the purchaser is protected for seven years against Major Structural Defects. For homes enrolled before that date, the protection lasts for five years. Coverage under this provision is by the builder initially, and after the builder's warranties expire, it becomes the responsibility of the Program. Under the Act, a major structural defect is defined as any defect that results in failure of a load-bearing part of the house's structure, or defects in materials or workmanship that adversely affect the use of the building as a home.

6. **Delayed closings & delayed occupancy.** Similar rules govern delays in the closing date, and for condominium units, delays in the occupancy date.

A) **Delayed closings.** The builder must not delay the closing date on your home without notifying the purchaser. For minor delays of no more than 15 days, the purchaser must be notified at least 35 days before the original closing date. For longer delays, the builder must give at least 65 days' notice and set a new closing date. In either case, the builder *has or is permitted* five days without penalty. Beyond that, purchasers can claim compensation of up to \$5,000 for out-of-pocket expenses resulting from the delay.

*To be compensated, the purchaser must close the sale.* Purchasers are covered for reasonable moving costs and the cost of storing possessions, plus up to \$100 a day in living expenses. Claim forms are available through builders. Receipts are needed for out-of-pocket expenses, although receipts aren't required for incidental expenses of up to \$25 a day.

**Exceptions.** There is no compensation for delays caused by things out of the builder's control, such as floods, natural disasters, or fires and strikes.

B) **Delayed occupancy in condominiums.** For all condominium purchase agreements signed on or after March 1, 1991, the following rules apply:

- ❑ Every Agreement of Purchase and Sale must give either a confirmed occupancy date, or a tentative occupancy date that is clearly labelled tentative. If it gives a tentative date, the purchaser has the right to receive notice of when he or she will be told the confirmed occupancy date. The notice is to be based on a date or event that will trigger it — for example, the purchaser is told that he or she will be given the confirmed date when the foundation is complete, or when some other stage in construction is reached.
  - ❑ The purchaser must be given this notice no later than 120 days before the confirmed date, and no later than 30 days following completion of the roof assembly.
  - ❑ If the purchaser is not given notice of the confirmed date by 90 days prior to the tentative date in the original agreement, then the tentative date automatically becomes the confirmed date.
  - ❑ The builder is allowed to offer occupancy earlier than the confirmed date, but is not allowed to *demand* it. The purchaser must consent to it in writing.
  - ❑ As is the case for delayed closings for houses, the vendor may extend the confirmed occupancy date *once* by up to 120 days, if the purchaser is given written notice at least 65 days before the confirmed date. The vendor can also have a 15-day extension if the purchaser is given 35 days' notice.
  - ❑ In all cases, vendors are permitted a five-day grace period when they give notice to their purchasers. Beyond that, any vendor who fails to give proper notice will be required to give the purchaser compensation of up to \$100 a day for living expenses and other expenses incurred as a result of the delay, to a maximum \$5,000 total direct costs.
  - ❑ A vendor is *not* responsible for delays caused by strikes, fires, civil insurrection, floods or "Acts of God."
7. **Substitutions.** Purchasers are protected against substitutions of key elements in a new

home or condominium unit, and in condominium common elements. If significant changes are made without approval, purchasers may be able to cancel the agreement and get their deposit back, and/or claim damages up to \$20,000.

### **Examples of builder substitutions not allowed include:**

- major changes to the original plan
- reverse ("mirror image") plan
- house model and style of exterior
- brick color and type of exterior finishes
- exterior dimensions of the house
- condominium unit model and style

The Agreement of Purchase and Sale may also give purchasers the right to choose certain colors and styles. If so, the builder cannot substitute these without consent. If he does, purchasers can demand that they be changed back, or the builder must make a cash settlement. Examples include:

- interior and exterior paint colors (not shadings)
- design and color of cabinets and countertops
- color and type of kitchen and bath fixtures
- style of interior trim
- floor finishes

If the builder cannot supply a certain choice of color or finish, the purchaser must be notified in writing. She or he then has seven days to make new selections. If they don't, the builder has the right to substitute options of equal or better value.

**NOTE:** The maximum liability for warranty coverage on any new home or condominium unit is \$100,000. Individual condominium units are protected in the same way as houses. Common condominium elements are also covered from the date the project is registered, up to a maximum of \$50,000 times the number of units, to a maximum of \$2.5 million.

# What is not covered

1. **Unfinished homes.** The Program does **not** employ contractors to complete unfinished homes (although we do compensate for incomplete work in homes that are sufficiently complete to meet the definition of a home under the Act — see the section on *Incomplete work*). In a custom-built home being constructed under contract, it is the purchaser's responsibility to supervise and pay for completion, and to comply with the Construction Liens Act. For other homes, it is the builder's responsibility to complete the items specified in the Agreement of Purchase and Sale.
2. **Defects in materials,** design and workmanship in anything supplied by the purchaser.
3. **Secondary damage** resulting from defects that are under warranty. The defects themselves are covered, but the personal or property damage they may cause is not.
4. **Normal** wear and tear.
5. **Normal shrinkage** of materials that dry out after construction.
6. **Damage** caused by dampness or condensation caused by the home-owner not maintaining adequate ventilation.
7. **Damage** caused by improper maintenance.
8. **Changes** made by the purchaser.
9. **Settling soil** in land around the house or along utility lines. (However, soil settlement under the building foundation itself *is* covered.)
10. **Damage** due to the effects of floods or "Acts of God", the owners, tenants, guests, wars, riots, insurrection, civil commotion or vandals.
11. **Damage** from insects and rodents (except when the construction did not meet the Ontario Building Code).
12. **Damage** caused by municipal services and other utilities.



13. **Surface defects in workmanship** and materials that were noted in writing and accepted by the owner at the date of possession.
14. **Temporary or seasonal dwellings** (such as cottages) that are not built on a permanent foundation and do not have insulation that would make them habitable year-round.
15. **New homes** built on existing footings or foundations.

## You and the Warranty Program

Before you agree to act as the agent in the sale of a new home, check that the builder is registered and that the home is enrolled with ONHWP. Ask the builder for his registration number and the home's enrolment number, and call the Program to verify these numbers. Condominiums should have an enrolment number for each unit, as well as one for the common areas.

### When you sell a home

Make sure your purchasers understands their rights and responsibilities under the Ontario New Home Warranties Plan Act. Home purchasers can obtain information brochures and the annual *Home Buyer's Guide To After-Sales Service* from the nearest Regional Office of the Program.

Encourage your client to have a lawyer review the Agreement of Purchase and Sale. It's also wise for you to check it over yourself with your client, to avoid getting caught in a dispute between builder and purchaser.

Remember, too, that resale homes less than seven years old should still have some warranty coverage. The warranty is transferred to the new owner, and you can check on the remaining coverage by calling the nearest ONHWP office.

### When you close a sale

Whenever you close a sale, make certain that an ONHWP Certificate of Completion and Possession is completed. The CCP should list all existing defects, providing a record to help settle disputes. It should also list defects noted by the homeowner and accepted at the time of possession. Builders



must also repair warranted defects that arise later, up to their warranty's expiration date.

The CCP is provided by the builder and signed by both builder and purchaser. The builder forwards it to the Program and the Program will then issue the Warranty Certificate directly to the purchaser.

Condominium purchasers complete a CCP to receive a Warranty Certificate for their own individual unit. Once the condominium corporation is registered, the builder will prepare another CCP for the common elements of the building, to be signed by the condominium's Board of Directors, who will receive a separate Warranty Certificate for those areas.

## **If your customer has problems**

Normally, a home purchaser should not approach the real estate agent with warranty problems. However, some of your clients may nevertheless ask you for advice. Here's what you can tell them:

- They should contact their builder directly regarding warranted defects. They may have to be persistent. If phone calls don't bring results, they should write to their builder.
- Letters to the builder should be sent by registered mail, with an "AR" (acknowledgement of receipt) sticker, obtainable at the Post Office. This sticker is to be signed by the person receiving the letter and returned to the person who sent it. That way, your client has proof of delivery.
- Tell your client to file all returned AR stickers along with the registered mail receipt and a copy of the letter. They should also send the Program a copy of all letters to the builder.
- The letter should include the warranty number, the lot and plan numbers or condominium address and unit number. Your client should describe the problem and ask the builder to correct it. The letter should be proof-read before it's mailed, to make sure it cannot be misunderstood.
- Remind your client to bring any problems to the attention of the builder, and the ONHWP, *before the end of the warranty period*. If the builder does

not reply within a reasonable time, they should contact ONHWP. Even if the “reasonable time” carries on beyond the end of the builder’s warranty period, your client is still covered for warranted defects — as long as the complaint was launched before the warranty expired. That’s why it’s so important to have proof that letters were sent, and received.

- Problems with condominium common elements should be brought to the attention of the condominium’s Board of Directors, which is formed after the complex is registered, within the warranty period. If problems arise before the project is registered, the unit holders should form a committee and contact ONHWP for assistance.

### **After the builder’s warranty expires:**

Home purchasers should write directly to the Program about any major structural defects after builder’s warranties expire, up to the end of the five or seven-year warranty period. Certain parts of your warranty coverage, including water seepage through the foundation into the basement, are covered by the builder for two years.

If you are knowledgeable about the warranties, your clients will be better served.

## **The condominium difference**

Condominium purchasers receive warranty protection similar to any other home purchasers. But because condominiums are made up of both individual units and shared areas called the common elements, there are some differences:

- ❑ Condominiums have two sets of warranties: One for the homeowner covering his or her unit and another for the condominium corporation and its Board of Directors, covering the common elements of the building.
- ❑ Once the project is completed and registered as a condominium corporation, a Board of Directors, representing the unit owners, is elected. The Board should arrange with the builder for the Certificate of Completion and Possession on the common elements.

- ❑ Common elements are covered from the date the condominium corporation is registered, but an individual unit is covered from the date the purchaser takes possession. The purchaser does not get title to the unit until the condominium corporation is registered, which can be anywhere from a few months to several years after they move in.
- ❑ Closing dates depend on registration and are out of the builder's control, so condominium purchasers aren't compensated for delays in closing. However, they do have protection against delays in the agreed-upon occupancy date (see the section *What is covered.*)
- ❑ **The Program has a variety of helpful literature for both home purchasers and builders. Call your nearest Regional Office for information.**
- ❑ **We can also supply a guest speaker for your meeting or seminar, to talk about the Ontario New Home Warranty Program and you.**

# Offices of the Ontario New Home Warranty Program

## Head Office:

5160 Yonge St.,  
6th Floor  
Northeast Tower  
North York, Ontario M2N 6L9  
(416) 229-9200  
Toll free number: 1-800-668-0124

## Regional Offices:

**Whitby (Serving Regions of Durham, Haliburton, Northumberland, Peterborough, Victoria and the cities of Toronto, Scarborough and East York.)**  
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2 County Court Blvd., Suite 435  
Brampton, Ontario L6W 3W8 (416) 455-0500

**Publication Toll free number: 1-800-668-7504**

